

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
20.9.701, 20.9.703, 20.9.705,	)	PROPOSED AMENDMENT AND
20.9.706 and 20.9.707 and the repeal	)	REPEAL
of 20.9.702 and 20.9.704 pertaining	)	
to the parole and release of youth	)	

TO: All Concerned Persons

1. On June 14, 2013, at 10:00 a.m., the Department of Corrections will hold a public hearing in Room 3-65 of 5 South Last Chance Gulch, at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Corrections no later than 5:00 p.m. on June 12, 2013, to advise us of the nature of the accommodation that you need. Please contact Mr. Jeff Christofferson, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-6551; fax (406) 444-6495; or e-mail Jchristofferson@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

20.9.701 PAROLE OF YOUTH FROM A STATE YOUTH CORRECTIONAL FACILITY DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Assigned juvenile parole officer" means the officer whom the Youth Services Division assigns to monitor the youth who enters a state youth correctional facility.

(4) (2) "Department" means the dDepartment of eCorrections as authorized in 2-15-2301, MCA.

(2) (3) "Discharge" means formal action taken by the department to relieve the state both the department and the youth court of jurisdiction over a youthful offender who has been committed to department custody.

(3) remains the same but renumbered (4).

(4) (5) "Length of stay" means the length of time between admission to the facility and the tentative parole date established for a youthful offender by the length of stay committee based on the length of stay guidelines a youth is incarcerated in a state youth correctional facility.

(5) "Length of stay committee" means the youth correctional facility committee appointed by the facility superintendent that establishes a length of stay and determines a tentative parole date for each youthful offender upon the offender's admission into the facility.

~~(6) "Length of stay guidelines" means the factors established by department/facility policy and approved by the department director by which a youth's length of stay is determined.~~

~~(7) (6) "Parole" means release of a youthful offender from a state youth correctional facility to the community, a department program subject to supervision of the department.~~

~~(8) (7) "Release" means the act of allowing the youth to leave the youth correctional facility to juvenile parole. "Parole date" means the date that a youthful offender may be paroled from a facility as determined by the length of stay committee.~~

~~(9) (8) "Secure facility emergency release" is a release granted by the superintendent of a secure facility state youth correctional facility because as a result of the population of the facility has exceeded the rated capacity of the facility.~~

~~(10) (9) "Youth parole agreement" means a document containing the terms and conditions of the youthful offender's release on parole.~~

~~(11) "Youthful offender" means a person under the age of 18 who has been adjudicated in a Montana youth court.~~

AUTH: 52-5-102, MCA

IMP: 52-5-102, MCA

REASON: Changes in definitions were made to conform to current practice, statutory requirements, and to allow the facilities some flexibility to determine the length of stay.

20.9.703 DUTIES OF LENGTH OF STAY COMMITTEE (1) ~~The length of stay committee's duties are as follows:~~

~~(a) to establish each youth's length of stay within 30 days of a youth's arrival at the facility;~~

~~(b) to determine a youth's tentative parole date; and~~

~~(c) to review each youth's final parole date at least 10 days in advance of the youth's parole~~ The youth correctional facility will determine a tentative length of stay for each youth who enters the facility. The length of stay establishes the tentative date upon which the facility will release the youth because the youth is suitable for and will be placed on juvenile parole.

~~(2) If the committee denies a youth parole, it must:~~

~~(a) list the reasons for the denial; and~~

~~(b) identify conditions to be met for reconsideration of parole~~ The facility will determine the tentative length of stay within the first 30 days the youth is admitted to the facility. The facility will inform the youth, the youth's parents or guardians, and the assigned juvenile parole officer of the length of stay the facility has established and the tentative release date.

~~(3) If the committee is unable to reach agreement on the parole of a youthful offender, a vote must be taken. To determine the initial tentative length of stay the facility may consider any criteria deemed important, including but not limited to the following:~~

(a) ~~The committee member representing community corrections will have one vote, and the facility will have one vote.~~ category of criminal offense or offenses the youth has committed; i.e., violent offense, crime against the person, property crime, sex offense, or misdemeanor offense;

(b) ~~If the vote is tied, the decision regarding parole of the youthful offender must be made by the department director~~ the number of offenses for which the youth has been adjudicated;

(c) the youth's treatment needs; and

(d) the recommendations of the youth court.

(4) No less than quarterly, facility staff will reevaluate the length of stay for each youth at the youth's progress reviews.

(a) Facility staff may change the length of stay for the youth based on the youth's progress through the program and the youth's progress in treatment.

(b) If the facility changes the length of stay and tentative release date, staff will inform the youth, the youth's parents or guardians, and the assigned juvenile parole officer.

AUTH: 52-5-102, 52-5-111, 52-5-126, 52-5-127, MCA

IMP: 41-5-1513, 41-5-1522, 52-5-101, 52-5-102, MCA

REASON: The tentative length of stay determination should provide the youth with the concrete steps necessary to reach the goal of release. While the determination will be based on the circumstances that cause the youth to be committed to the facility, it will be changed to meet the individual youth's performance.

20.9.705 POLICIES AND PROCEDURES (1) Each facility must have written ~~policies and procedures that governing~~ length of stay; The procedures must be based upon department policy and approved by the department director Youth Services Division administrator.

(2) The length of stay procedures must which provide for the following:

(a) ~~a means of determining length of stay so that youthful offenders with similar delinquency histories and similar offenses will receive similar lengths of stay;~~

(b) ~~a youth has incentives for youthful offenders to maximize demonstrate opportunities for positive change so youth can shorten the assigned length of stay;~~

(c) ~~the criteria the facility uses to establish a tentative length of stay are consistent, fair, and objective criteria upon which to base parole release recommendations; and~~

(d) ~~the facility may take into consideration discretion in individual cases based on aggravating or mitigating factors which demonstrate the necessity of a longer or shorter length of stay.~~

(2) (3) When a youth is granted a release to juvenile parole, Each facility procedures must require a youth to sign a youth parole agreement that containing:

(a) a statement of the terms and conditions of the youthful offender's release, including a list of the acts that, if committed by the offender youth, could result in the youth offender's return to the facility;

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youthful offender is entitled to a

hearing as provided for in 52-5-129, MCA, before the department may returning the youth to the facility; and

(c) the youth's signature.

AUTH: 52-5-102, MCA

IMP: 52-5-102, 52-5-126, 52-5-129, MCA

REASON: The length of stay procedures, and the methodology for applying those procedures, must be implemented transparently. While the length of stay will be based on the individual youth, it must be free from charges of bias or favoritism. Further, each youth must understand determination should provide the youth with the concrete steps necessary to reach the goal of release. While the determination will be based on the circumstances that caused the youth to be committed to the facility, it will be changed to recognize the individual youth's performance.

#### 20.9.706 EMERGENCY RELEASE BY SUPERINTENDENT

DETERMINATION OF CAPACITY AND ALTERNATE PLACEMENT (1) Annually, the department will determine the capacity for each state youth correctional facility. Each year when the department has determined the facility capacities, it will notify all district courts, sheriffs, and youth courts in the state of the capacity of each facility.

(2) When the population of a youth correctional If a facility exceeds its rated established capacity, the superintendent has the authority to release certain eligible youthful offenders from the facility pursuant to facility policy, with notice to the community corrections division of the department department director may declare that the facility has exceeded its capacity and stop admissions to the facility. If the director stops admissions to the facility, the department will notify each district court, sheriff, and youth court that the facility will not accept admissions until the population of the facility is less than the established capacity.

(3) During any time the department stops admissions to a facility, the department will find alternative placements for youth whom the courts commit to the department. Before the department places a youth in an alternative placement, it will inform the court that committed the youth and seek approval for the alternative placement. The department may not make the alternative placement without approval of the committing court.

AUTH: 52-5-102, 52-5-105, MCA

IMP: 41-5-355, 52-5-101, 52-5-102, MCA

REASON: The department can only provide custody, assessment, care, supervision, treatment, education, habilitation, and work and skill development for youths in correctional facilities up to a specific ratio of staff to youth. Once this ratio is exceeded, the department's ability to perform its duties drops sharply. In order to best serve the needs of the youth of Montana, the department must therefore limit the number of youth in facilities. However, simply releasing a youth is not likely to be in accordance with the court's commitment. The department will therefore work to find an alternate placement that supports the court's intent.

20.9.707 RELEASE, SUPERVISION STATUS CHANGE, AND DISCHARGE OF YOUTHFUL OFFENDER (1) The department will release a youth from a youth correctional facility when ~~If a youthful offender is on parole status it is the responsibility of the juvenile parole officer to submit a "request for discharge" to the community corrections administrator or designee when:~~

~~(a) the youth has spent the maximum amount of time in a youth correctional facility pursuant to 41-5-1522, MCA the youth has attained age 18;~~

~~(b) the department places the youth on juvenile parole pursuant to a parole agreement the court order committing the youth to the department has expired; or~~

~~(c) the youth court order remands the youth back to youth court supervision once the adjudication to the department is completed the youth is being prosecuted in criminal court as an adult; or~~

~~(d) the youth is appropriate for discharge because the youth has met all the conditions of his/her parole agreement and has responded positively to programming.~~

(2) The department will change the supervision status of a youth when ~~If a youthful offender is residing in a state youth correctional facility it is the responsibility of the facility caseworker to submit a "request for discharge" to the facility superintendent or designee when:~~

~~(a) the youth is transferred to supervision by adult probation/parole as a result of a transfer pursuant to 41-5-208, MCA the youth as attained age 18; or~~

~~(b) the youth is no longer under the jurisdiction of the youth court, and will be supervised under an extended jurisdiction adjudication the court order committing the youth to the department has expired;~~

~~(c) the youth is being prosecuted in criminal court as an adult; or~~

~~(d) the youth has served the maximum period of confinement pursuant to 41-5-1522, MCA.~~

(3) The department will notify the youth court, in writing, that the department is releasing a youth from a youth correctional facility and inform the youth court of the date of release ~~The community corrections administrator or facility superintendent will review the request for discharge and forward the request to the department director for approval or disapproval.~~

(4) The Department of Corrections will discharge a youth from department custody and supervision if ~~The department director may approve or deny the request for discharge. If the director approves the request, the director will sign the request, and distribute copies of the signed request for discharge to:~~

~~(a) the youth has fulfilled the obligations of juvenile parole as established and assessed by the department the administrator or designee of the community corrections division, or the superintendent of the appropriate state youth correctional facility;~~

~~(b) the youth has reached 18 years of age and the court order does not remand back to youth court for continued supervision to age 21 the youth court probation office; and or~~

~~(c) the dispositional order that committed the youth to the department has expired because the order committed the youth for age certain the youth's juvenile parole officer.~~

(5) In reaching the decision to discharge a youth from department custody and supervision, the department will consider the recommendations of the youth court as expressed in the dispositional order ~~The victim notification requirements of 41-5-1416, MCA, must be fulfilled if the victim has provided the department with a current address and telephone number.~~

(6) A discharge from the department terminates the jurisdiction of the youth court. The department will notify the youth court, in writing, when it discharges a youth from department custody or supervision ~~If the director denies the request for discharge, the director will return it to the community corrections administrator or appropriate superintendent stating the reasons for disapproval.~~

(7) At least four weeks before a youth leaves a youth correctional facility, the department will notify any victims of a felony offense that have requested notification of the youth's release or discharge from the facility. Notification will be made in writing or by whatever other means the victim has specified ~~The director may not deny discharge of a youth that has attained the age of 18. The department may not pay for the care, custody or supervision of any delinquent youth that has attained age 18.~~

AUTH: 52-5-102, MCA

IMP: 41-5-205, 41-5-1416, 41-5-1513 ~~41-5-1516, 41-5-1522, 46-24-213, 52-5-126, MCA~~

REASON: The changes above have been made to align the rule with the statutes it implements, and to conform to victim notification requirements.

The department proposes to repeal the following rules:

#### 20.9.702 MEMBERSHIP OF LENGTH OF STAY COMMITTEE

AUTH: 52-5-102, MCA

IMP: 52-5-102, MCA

REASON: The removal of the length of stay committee streamlines the process of developing a comprehensive assessment of youths, their offenses, and their treatment or other needs.

#### 20.9.704 LENGTH OF STAY COMMITTEE DECISIONS

AUTH: 52-5-102, MCA

IMP: 52-5-102, MCA

REASON: The length of stay committee has been replaced by the length of stay determination mechanism and corresponding procedures.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jeff Christofferson, Department of Corrections, 5 South Last Chance

Gulch, Helena, Montana, 59620; telephone (406) 444-6551; fax (406) 444-6495; or e-mail [jchristofferson@mt.gov](mailto:jchristofferson@mt.gov), and must be received no later than 5:00 p.m., June 21, 2013.

5. Benjamin Reed, Department of Corrections, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph four above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Benjamin Reed  
Benjamin Reed  
Rule Reviewer

/s/ Mike Batista  
Mike Batista  
Director  
Department of Corrections

Certified to the Secretary of State May 13, 2013.